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## IN THE UNITED STATES DISTRICT COURT

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## FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 EVERETT HOGGE AND PRISCILLA HOGGE, No. C07-02873 MJJ

12 Plaintiff,

**ORDER GRANTING PLAINTIFFS'  
MOTION TO REMAND**

13 v.

14 A W CHESTERTON COMPANY,

15 Defendant.  
\_\_\_\_\_/16  
17  
18 Before the Court is Plaintiffs Everett Hogge and Priscilla Hogge ("Plaintiffs") Motion to  
19 Remand.<sup>1</sup> Defendant John Crane Inc. ("Defendant") opposes the motion. The Court having  
20 considered the parties' arguments and upon good cause shown **GRANTS** Plaintiffs' motion.21 Pursuant to 28 U.S.C. § 1441(a), a defendant in a civil action may remove a case from state  
22 court to federal district court if the district court has subject matter jurisdiction over the case. The  
23 district court has subject matter jurisdiction over a case if there is diversity of citizenship between  
24 the parties or if the action is founded on a claim arising under the Constitution, laws, or treaties of  
25 the United States. 28 U.S.C. § 1441(b); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1332  
26 (diversity jurisdiction); *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1393 (9th Cir. 1988).  
27 Section 1441(b) further provides that if the basis for federal jurisdiction is diversity of citizenship,  
28 removal is available only if no defendant is a citizen of the forum state. As the party seeking to

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<sup>1</sup>Docket No. 16.

1 remove the action, the defendant bears the burden of establishing that subject matter jurisdiction  
2 exists. *Ethridge*, 861 F.2d at 1393. Because the Court strictly construes the removal statute against  
3 removal, if there is any doubt as to the existence of federal jurisdiction, the Court should remand the  
4 matter to state court. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

5 Because the record before the Court does not establish that binding settlement agreements  
6 have eliminated all non-diverse Defendants from the state court action, complete diversity did not  
7 exist as of the time of removal. Accordingly, this Court is without subject matter jurisdiction. For  
8 the foregoing reason, the Court **GRANTS** Plaintiffs' Motion to Remand.

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10 **IT IS SO ORDERED.**

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12 Dated: June 8, 2007

  
13 MARTIN J. JENKINS  
14 UNITED STATES DISTRICT JUDGE